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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/703,562	11/01/2000	William C O'Neil, Jr.	TFUND-4809	3102

72960 7590 10/15/2007

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EXAMINER	
CHAMPAGNE, DONALD	
ART UNIT	PAPER NUMBER
3622	

MAIL DATE	DELIVERY MODE
10/15/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/703,562	Applicant(s) O'NEIL, JR. ET AL.	
	Examiner Donald L. Champagne	Art Unit 3622	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 18 September 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☐ The period for reply expires _____months from the mailing date of the final rejection.
   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: _____.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☒ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

DONALD L. CHAMPAGNE
PRIMARY EXAMINER

Donald L. Champagne
Primary Examiner
Art Unit: 3622

Continuation of 11. does NOT place the application in condition for allowance because: The arguments have in substance been considered in the final rejection mailed on 19 July 2007. To summarize, first, the patent corps does not give weight to non-patent public policy (para. 13 of the final rejection). Applicant argues (pp. 13-14) that the examiner should give weight to the acknowledgement, by the examiner, that the instant invention "satisfies a long-felt need". The examiner made that statement of record because the examiner believes it is a significant finding of fact. That does not mean or require that the patent corps must give it weight.

Second, the claims stand rejected because they differ only in obvious ways from the prior art. The prior art explicitly teaches every feature of the instant invention except saving or spending specifically on higher education. In particular, the prior art explicitly teaches an account for long-term investment, including an IRA (para. 5 of the rejection). It is common and therefore obvious to write checks from long-term investment accounts for higher education funding (para. 5 of the rejection). Applicant argues (pp. 9-10) that that is not an adequate rejection under 35 USC 103, but the argument is not compelling for two reasons: First, the Supreme Count has ruled that it is obvious to combine prior art elements according to known methods to yield predictable results (KSR INT'L CO. v. TELEFLEX INC. 550 U.S. ___(2007)). Second, the examiner can attest from personal experience, as can indeed many others, that it is within the prior art to spend on higher education from a long-term investment account, and that the results are predictable.

Applicant argues (pp. 16-18) that the references "teach away" from the instant invention. Hardly. This is a logical fallacy that has been explained in the legal literature (Barry, Lance Leonard, "Teaching A Way Is Not Teaching Away", JPTOS, Dec. 1997: 867-882).

Applicant also argues (pp. 18-21) that the examiner has "ignored" claim limitations. Again, hardly. Applicant has ignored inconvenient parts of the rejection (e.g., in para. "3" with reference to limitation "iii", the citation to MPEP 2131.01.I). Applicant is entitled to interpret the evidence as applicant sees fit, but the examiner finds applicant's argument un-compelling.

DONALD L. CHAMPAGNE
PRIMARY EXAMINER